

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-213424

DATE: April 10, 1984

MATTER OF: 71-72 Corporation

DIGEST:

Agency properly canceled sale of real property and rejected all bids where highest bid was significantly below agency appraisal of fair market value of property, IFB reserved to government the right to reject all offers, and pertinent regulations authorize agency to cancel sale and resolicit in these circumstances. GAO examination of agency appraisal reveals no impropriety in evaluation methods used.

71-72 Corporation (71-72) protests the cancellation of invitation for bids (IFB) No. W-G-DC-461, for the sale of real property located in Washington, D.C., by the General Services Administration (GSA). Essentially, 71-72 contends that the property should have been sold to it because its bid price was the highest of the four bids received. 71-72 contends that GSA's estimate of the fair market value of the parcel of land was unrealistically high and without a reasonable basis. 71-72 concludes that, since the rejection of its bid and cancellation of the sale were primarily based upon the fact that GSA's appraisal was significantly higher than 71-72's bid price, the cancellation was improper.

We deny the protest.

GSA advertised this sale and held a public auction on September 29, 1983, pursuant to provisions of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. § 484 (1976)), and regulations implementing that statute. The protester was the high bidder with an initial bid of \$11.2 million. By letter dated September 29, 1983, GSA informed 71-72 that its bid was below the GSA appraisal of the fair market value of the property, and GSA gave 71-72 an opportunity as the highest bidder to increase its bid in order to increase the likelihood of being awarded the contract. This offer was made by GSA pursuant to section

028544

101-47.305-1(b) of the Federal Property Management Regulations (FPMR) (41 C.F.R. § 101-47.305-1(b) (1983)). During the period within which 71-72 was allowed to increase its bid price, 71-72 inquired of GSA officials and was told that an acceptable bid for this property would be about \$14.1 million--the GSA estimate of the fair market value. On October 7 (confirmed by letter of October 11), GSA canceled the sale and rejected 71-72's bid because GSA had improperly informed 71-72 that the appraisal of the fair market value was \$14.1 million. Notwithstanding notification of the cancellation, by letter of October 11, 71-72 submitted a revised bid on the same terms and conditions as the original bid at a price of \$11.5 million and an alternate bid stating new terms and conditions; in the same letter with its bid revisions, 71-72 objected to the cancellation of the sale. On October 17, 71-72 filed its protest in our Office. In response to the protest, GSA argues, among other things, that its fair market appraisal was reasonable and, therefore, the public interest was best served by rejecting all bids and canceling the solicitation since none of the bids was commensurate with GSA's appraisal.

The gravamen of 71-72's protest is that GSA's appraisal of the subject property's fair market value was without a reasonable basis. In its initial protest to our Office, 71-72 pointed out three specific factors which it believes the GSA appraiser should have considered, but which were not considered, in evaluating the property: (1) the property is presently unzoned, (2) the property is divided into three parcels by alleys, and (3) there are currently certain parking arrangements which have a "depressant effect" on the value. The protester has repeatedly requested a copy of the appraisal but GSA has refused to allow the protester to review that document. Instead, GSA has provided a copy of the appraisal to our Office for use in resolving this protest. Due to the confidential nature of this material, we have reviewed the appraisal report in camera, and our discussion in this decision is necessarily limited. See, for example, Texstar Plastics Company, Inc., B-201105, September 18, 1981, 81-2 CPD 223.

The subject IFB, at paragraph 1.h of the "Special Terms of Sale," expressly reserved to the government the right to reject any and all offers. In accord with sections 101-47.305-1(b) and (d) of the FPMR, it is within the

discretion of the agency whether to allow the high bidder to increase its bid or to reject all bids and reoffer the property for sale after the initial auction results in bids which are not commensurate with the fair market value of the property. 41 C.F.R. §§ 101-47.305-1(b) and (d) (1983). Moreover, we have held that (1) contracting officers have authority to reject all bids where it can be determined that it is in the public interest to do so and (2) failure of the highest bid to come up to the appraised fair market value is a proper basis for rejecting all bids in a sale of real property by the government. 49 Comp. Gen. 685 (1970); B-144756, March 28, 1961. Even though GSA advanced this second basis for the cancellation for the first time in its report on this protest, it can be used to justify the cancellation so long as it would have been proper support for the determination to cancel at the time that decision was made. See NonPublic Educational Services, Inc., B-207751, March 8, 1983, 83-1 CPD 232.

The development of an estimate of the fair market value of surplus real property is, like the development of a cost estimate in a procurement, a matter of judgment which will not be questioned by our Office except where it can be clearly shown that the appraisal methods were improper or lacking in credibility. Fort Holabird and Casil Corporation, 57 Comp. Gen. 823 (1978), 78-2 CPD 217. Here, we have examined the GSA appraisal in light of the protester's criticisms. While we are not at liberty to discuss the contents of that report due to the agency's objection to the release of such material outside our Office, we can state that we find no impropriety in the evaluation methods used. Fort Holabird and Casil Corporation, supra. We note that the GSA appraiser was clearly aware of and gave consideration to the factors cited by the protester--lack of zoning and presence of alleys and parking commitments.

In comments filed pursuant to an informal conference on this protest, 71-72 set out in detail a methodology it believes GSA should have used--or, at least, 71-72 contends a similar methodology would have been appropriate. As previously stated, our examination of GSA's appraisal shows that it does not lack credibility and, to the extent, if any, that GSA's methodology differs from the model proposed

by 71-72, we are not prepared to accept 71-72's appraisal method and to reject as improper the method used by GSA. We have consistently held that, in technical disputes such as this, a protester's disagreement with an agency's opinion, even if the protester's position is supported by an alleged expert's technical advice, is not enough to invalidate the agency's technical expert's opinion. See London Fog Company, B-205610, May 4, 1982, 82-1 CPD 418.

Accordingly, we find no impropriety in GSA's decision to cancel this sale and reject all bids. In view of this finding, we need not discuss the protester's allegation that GSA's cancellation was improper because it was based upon an improper determination that the sale had to be canceled because the appraisal estimate had been erroneously revealed to 71-72.

The protest is denied.

for *Sheldon J. Aroslan*
Comptroller General
of the United States